

Decision 04-03-019 March 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA
EDISON COMPANY (U 338-E) for Authority to
Lease Available Land located on the Center-Del
Amo Transmission Right of Way to CT Storage-
Bellflower, LLC.

Application 03-12-006
(Filed December 5, 2003)

**DECISION GRANTING APPROVAL UNDER PUB. UTIL. CODE § 851
FOR A LEASE OF UTILITY PROPERTY**

Summary

The Commission grants the unopposed application of Southern California Edison Company (SCE) for authority to lease available land under Pub. Util. Code § 851.¹ The SCE property consists of 8.3 acres located on a portion of SCE's Center-Del Amo transmission Right of Way in the City of Bellflower (Site). The Site is part of the Center-Del Amo 220 kilovolt (kV) system. The lease is sought to permit CT Storage-Bellflower, LLC (CT Storage or Lessee) to operate a recreational vehicle (RV) storage facility on the Site. The lease will not interfere with SCE's utility obligations and will generate additional revenues to be split between SCE's shareholders and ratepayers under the sharing mechanism approved in prior Commission decisions.

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

Applicable Law

SCE's application is made under § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public.² Leasing real property on which transmission towers and lines are located is therefore one of the enumerated activities that require approval under § 851.³

The Proposed Lease

The Site is subject to an Option Agreement between SCE and CT Storage (Appendix A to the application), dated March 24, 2003. Pursuant to the Option Agreement, CT Storage has the right subject to Commission approval to lease the Site from SCE for the described uses for a period of 45 years beginning

² Section 851 reads, in pertinent part:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. ...

³ As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (Decision (D.) 92-07-007, 45 CPUC 2d 24, 29.)

on the date CT Storage exercises the option. CT Storage also may renew the lease for up to two (2) additional ten (10) year terms. Under the Option Agreement, CT Storage will pay annual base rent of \$20,000 in Year 1; \$25,000 in Year 2; \$30,000 in Year 3; \$83,884 in Year 4, escalating to \$134,609 by Year 20. Base rent will be further adjusted by appraisal to reflect fair rental value, excluding the value of CT Storage's improvements, after Years twenty (20), thirty (30) and forty (40) of the lease terms, and upon CT Storage's exercise of each of its two additional renewal options. In no event, however, will adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, or be more than base rent paid prior to such adjustment increased by ten percent (10%).

The Option Agreement provides that CT Storage's activities must not interfere with the operation of the electric facilities that cross the Site. To that end, CT Storage is forbidden to use or store hazardous substances, explosives or flammable materials on the Site. Further, any equipment used by CT Storage on or adjacent to the Site must maintain at all times a clearance of at least seventeen (17) feet from all overhead electrical conductors. CT Storage must maintain a minimum radius of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors and provide access roads to the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle. SCE also has the right to approve construction plans and specifications for the development project.

SCE retains various rights under the Option Agreement including the rights to:

- Enter the Site at any and all reasonable times to inspect the property;
- Impose temporary restrictions on CT Storage's right to enter, occupy and use the Site in order to perform necessary work on the electrical facilities located on the Site; and
- Take back all or part of the leasehold by eminent domain or inverse condemnation.

CT Storage is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to be constructed thereon;
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Site;
- Maintain appropriate comprehensive general liability, auto liability, and worker's compensation insurance; and
- Indemnify SCE against all liability for damages or injury to persons on the Site except to the extent caused by SCE's negligent or willful misconduct.

Determination of Best Secondary Use

The primary use of facilities located on the Site is the transmission and distribution of electricity in the City of Bellflower. SCE's aboveground electric lines crossing the Site, and their associated restrictions and height clearances limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and with the land uses allowed by the City of Bellflower. SCE has determined that the CT Storage project offers the highest potential revenue. To evaluate the rental potential of the Site, SCE

analyzed the rent paid for comparable RV parking facilities. SCE believes that the rent it will receive falls within the acceptable market range and is in line with revenues it receives from similar Commission-approved transactions.

Developer Selection

SCE states that it entered into the Option Agreement with CT Storage because of the company's financial offer, and the background and experience of the company's members.

CT Storage is owned by CT Realty Corporation and was formed specifically to develop the Site. SCE states that CT Realty Corporation was formed in February 1994 and has acquired a portfolio of over 30 properties with a total value of nearly \$200 million.

CT Realty Corporation was founded by Robert Campbell and U. T. Thompson, III. SCE states that Robert Campbell, President of CT Realty Corporation, has twenty-five years of real estate development experience, and is a former partner of Birtcher/Campbell. SCE states that while with Birtcher/Campbell, Campbell was responsible for developing approximately 30 industrial, commercial, and retail projects in California, Nevada, and Arizona, involving 7.5 million square feet of floor space. SCE describes U. T. Thompson, III, the Chairman of the Board of CT Realty Corporation, as an attorney and real estate broker with twenty years' experience as a general partner and investor in numerous commercial real estate ventures. SCE states that Thompson is also a founder and past Chairman of the Board of Pacific National Bank.

Environmental Matters

California Environmental Quality Act (CEQA) Compliance

Because CEQA applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the § 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines § 15051(b)).

In this case, the City of Bellflower is the Lead Agency. The Commission is a Responsible Agency for this proposed project. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency environmental documents and findings before acting upon or approving the project. (CEQA Guidelines §15050(b).) The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines § 15096.

We have reviewed the City's environmental documents (Appendix B to the application) for the CT Storage project. We find these documents to be adequate for our decisionmaking purposes.

On September 30, 2002, the Bellflower Planning Commission approved Resolution No. PC 02-39 adopting a Negative Declaration for the CT Storage Project. Conditional Use Permit Case No. CU 02-16 for the RV parking facility was approved under Resolution No. PC 00-17. As evidenced by these documents and a Department of Fish and Game Certificate of Fee Exemption

dated November 5, 2002, the environmental setting is urban and the proposed project's surrounding land uses are fully developed.⁴ A Notice of Determination for the CT Storage project was filed with the County of Los Angeles on November 18, 2002, finding that the project will not have a significant effect on the environment. Mitigation measures were not required or adopted as part of project approval. We find that the City reasonably concluded that the project will not have a significant effect on the environment and we adopt the City's finding for purposes of our approval.

Treatment of Any Future Environmental Claims

In D.01-05-005 (which modified D.01-01-039) and in D.01-05-004 (which modified D.01-01-043), the Commission clarified the limits of ratepayer responsibility for future environmental claims on leased utility property, as follows:

Should environmental claims, in whole or in part, related to the tenancy or activities of the lessee be made on SCE subsequent to the execution of the lease, SCE shall not seek recovery of any such claims, or defense of such claims, from ratepayers. (D.01-05-005, *slip op.* p. 3 and Ordering Paragraph 1.)

As SCE recognizes in the Application, this provision is equally applicable here, and should be imposed as a condition of our approval.

Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue

⁴ Department of Fish and Game further found that the project will not individually or cumulatively have an adverse impact on wildlife resources, as defined in § 711.2 of the Fish and Game Code.

sharing mechanism for certain of SCE's operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The Option Agreement and the proposed lease are "passive" for sharing purposes.⁵

Discussion

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: "The public interest is served when utility property is used for other productive purposes

⁵ See Attachment B to SCE's Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058, *slip op.*, p. 7.) We have reviewed the proposed agreement and find it does not interfere with SCE's operation or affect its ability to provide service to its customers. In other contexts, we have defined "productive" activities as those that lead to a measurable benefit to ratepayers. Because ratepayers will receive 30% of the gross revenue from the transaction without incurring any measurable increased costs, we find that the property is being "used for other productive purposes" and accordingly the proposed Lease is in the public interest and the Application should be approved.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Procedural Background; Categorization

SCE filed this application on December 5, 2003. No protests were filed. The Assigned Commissioner and Administrative Law Judge's (ALJ) Scoping Memo, issued on March 1, 2004, confirmed the determination of Resolution ALJ 176-3125 that this is a ratesetting proceeding and that no hearings are necessary.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. In order for CT Storage to construct its facilities on the Site, a lease from SCE is required.

2. Lease of the Site to CT Storage is consistent with the current uses of the related SCE properties.

3. The lease and associated construction will not impair SCE's ability to provide service to the public.

4. The City of Bellflower is Lead Agency under CEQA for the project.

5. In approving the proposed project, the City of Bellflower adopted a Negative Declaration for the project.

6. On November 18, 2002, a Notice of Determination was filed by the County Clerk of the County of Los Angeles finding that the project will not have a significant effect on the environment. Mitigation measures were not required or adopted as part of project approval.

7. The Commission is a responsible agency under CEQA and has reviewed the City's environmental documents.

8. All revenue from the lease in excess of a Commission-established threshold will be treated as OOR and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.

9. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested lease is in the public interest.

2. We find that the City's environmental documents are adequate for our review and decisionmaking purposes.

3. We adopt the City's finding that the project will have no significant effect on the environment.

4. This decision should be effective today in order to allow CT Storage to expeditiously enter into the lease with SCE.

O R D E R

IT IS ORDERED that:

1. The Application of Southern California Edison Company (SCE) for authority to lease a portion of its Center-Del Amo transmission Right of Way to CT Storage-Bellflower, LLC pursuant to the March 24, 2003 Option Agreement is granted, subject to the further provisions of Ordering Paragraphs 2-4.
2. All revenue from the lease shall be treated as Other Operating Revenue subject to the sharing mechanism set forth in Decision 99-09-070.
3. Should environmental claims, in whole or in part, related to the tenancy or activities of the lessee be made on SCE subsequent to the execution of the lease, SCE shall not seek recovery of any such claims, or defense of such claims, from ratepayers.
4. SCE shall notify the Director of the Commission's Energy Division in writing of any amendment, extension or termination of the lease agreement within 30 days after such amendment, extension or termination is executed.
5. This proceeding is closed.

This order is effective today.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners